

## ORDINANCE NO. \_\_\_\_\_

1           AN ORDINANCE amending Title 8 of the Lincoln Municipal Code relating to  
2   Health and Sanitation by creating a new Chapter 8.50 entitled the Lincoln Smoking Regulation  
3   Act by adding a new section numbered 8.50.010 to set forth the title of the Chapter; adding a new  
4   section numbered 8.50.020 to set forth the purpose of the Chapter; adding a new section  
5   numbered 8.50.030 to set forth general provisions regarding definitions used in the Chapter;  
6   adding new sections numbered ~~8.50.040 through 8.50.200~~ 8.50.060, 8.50.070, 8.50.080,  
7   8.50.090, 8.50.100, 8.50.110, 8.50.120, 8.50.130, 8.50.150, 8.50.160, and 8.50.180 to provide  
8   definitions for ~~bar, day or days,~~ employed, employee, employer, guestroom or suite, health  
9   director, indoor area, international no-smoking symbol, place of employment, ~~preference of the~~  
10   ~~users,~~ proprietor, public place, ~~smoking room~~ and, smoke or smoking ~~smoke shop, and theater,~~  
11   respectively; adding a new section numbered 8.50.210 to make it unlawful for any person to  
12   smoke in a place of employment or a public place and to provide exceptions therefor; adding a  
13   new section numbered 8.50.220 to make it unlawful for a proprietor to allow smoking in a place  
14   of employment or public place regulated by this chapter with exceptions; ~~adding a new section~~  
15   ~~numbered 8.50.230 to allow smoking by permit; adding a new section numbered 8.50.240 to~~  
16   ~~allow temporary smoking by a proprietor with written notification; adding a new section~~  
17   ~~numbered 8.50.250 to provide for a permit; adding a new section numbered 8.50.260 to provide~~  
18   ~~for inspections; adding a new section numbered 8.50.270 to provide for a hearing procedure for~~  
19   ~~suspension or revocation of permits;~~ adding a new section numbered 8.50.280 to provide for the  
20   enforcement of the provisions of the chapter; adding a new section 8.50.290 to provide penalties  
21   for violations of the chapter; adding a new section numbered 8.50.300 to allow for a grace period  
22   until November 1, 2004; adding a new section numbered 8.50.310 to provide for severability of

the chapter; and repealing Chapter 8.48 of the Lincoln Municipal Code, The Lincoln Smokefree Air Act, in its entirety.

BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

Section 1. That Title 8 of the Lincoln Municipal Code be amended by adding a new section numbered 8.50.010 to read as follows:

**8.50.010 Title.**

This Chapter shall be known as the Lincoln Smoking Regulation Act.

Section 2. Title 8 of the Lincoln Municipal Code be amended by adding a new section numbered 8.50.020 to read as follows:

**8.50.020 Purpose.**

The City Council does hereby declare it to be the public policy of this City to encourage places of employment and public places to reduce the health and safety risks posed by smoking in places of employment and public places. The City Council authorizes the Health Director of the Lincoln-Lancaster County Health Department and law enforcement to administer and enforce this Chapter within the City of Lincoln.

Section 3. That Title 8 of the Lincoln Municipal Code be amended by adding a new section numbered 8.50.030 to read as follows:

**8.50.030 Definitions; General Provisions.**

For the purposes of this Chapter, the following words and phrases shall have the meaning ascribed to them by this Chapter.

~~Section 4. That Title 8 of the Lincoln Municipal Code be amended by adding a new section numbered 8.50.040 to read as follows:~~

1     **8.50.040     Definition; Bar.**

2     ~~Bar shall mean any indoor area serving as a place of employment or a public place~~  
3     ~~licensed for the sale and service of alcoholic beverages for on-premises consumption and where~~  
4     ~~annual gross receipts from the sale and service of food constitute less than sixty percent (60%) of~~  
5     ~~annual gross receipts from all business activity conducted on the premises.~~

6             Section 5. That Title 8 of the Lincoln Municipal Code be amended by adding a  
7     new section numbered 8.50.050 to read as follows:

8     **8.50.050     Definition; Day or Days.**

9     ~~Day or days shall mean calendar days.~~

10            Section 4. That Title 8 of the Lincoln Municipal Code be amended by adding a  
11    new section numbered 8.50.060 to read as follows:

12    **8.50.060     Definition; Employed.**

13            Employed shall mean hired, contracted, subcontracted, or otherwise engaged to furnish  
14    goods or services.

15            Section 5. That Title 8 of the Lincoln Municipal Code be amended by adding a  
16    new section numbered 8.50.070 to read as follows:

17    **8.50.070     Definition; Employee.**

18            Employee shall mean a person who is employed by an employer in consideration for  
19    direct or indirect monetary wage(s), profit, or other remuneration.

20            Section 6. That Title 8 of the Lincoln Municipal Code be amended by adding a  
21    new section numbered 8.50.080 to read as follows:

22    **8.50.080     Definition; Employer.**

23            Employer shall mean a person, nonprofit entity, sole proprietorship, partnership, joint  
24    venture, corporation, limited partnership, limited liability company, co-op, firm, trust,  
25    association, organization, or other business entity formed for profit-making purposes, including  
26    retail establishments where goods or services are sold, who employs one or more employees.

Section 7. That Title 8 of the Lincoln Municipal Code be amended by adding a new section numbered 8.50.090 to read as follows:

**8.50.090 Definition; Guestroom or Suite.**

Guestroom or suite shall mean sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if any, rented to the public for their exclusive transient occupancy including, but not limited to, guestrooms or suites in hotels, motels, inns, lodges, or other such establishments.

Section 8. That Title 8 of the Lincoln Municipal Code be amended by adding a new section numbered 8.50.100 to read as follows:

**8.50.100 Definition; Health Director.**

Health Director shall mean the Director of the Lincoln-Lancaster County Health Department or authorized representative(s).

Section 9. That Title 8 of the Lincoln Municipal Code be amended by adding a new section numbered 8.50.110 to read as follows:

**8.50.110 Definition; Indoor Area.**

Indoor area shall mean an area enclosed by a floor, ceiling, and floor to ceiling walls on all sides that are continuous and solid except for closeable entry/exit doors and windows.

Section 10. That Title 8 of the Lincoln Municipal Code be amended by adding a new section numbered 8.50.120 to read as follows:

**8.50.120 Definition; International No-Smoking Symbol.**

International no-smoking symbol shall mean a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.

Section 11. That Title 8 of the Lincoln Municipal Code be amended by adding a new section numbered 8.50.130 to read as follows:

**8.50.130 Definition; Place of Employment.**

Place of employment shall mean an indoor area under the control of a proprietor that an employee accesses as part of the course of employment without regard to whether work is

1 occurring at any given time. The indoor area shall include, but is not limited to, work areas,  
2 employee breakrooms, restrooms, conference rooms, meeting rooms, classrooms, employee  
3 cafeterias, and hallways. A private residence shall not be considered a “place of employment.”

4 ~~Section 14. That Title 8 of the Lincoln Municipal Code be amended by adding a~~  
5 ~~new section numbered 8.50.140 to read as follows:~~

6 ~~**8.50.140**~~ ~~**Definition; Preference of the Users.**~~

7 ~~Preference of the users shall mean the smoking or nonsmoking preference of the~~  
8 ~~employees and/or members of the public who are users of a particular place of employment or~~  
9 ~~public place.~~

10 Section 12. That Title 8 of the Lincoln Municipal Code be amended by adding a  
11 new section numbered 8.50.150 to read as follows:

12 **8.50.150** **Definition; Proprietor.**

13 Proprietor shall mean any employer, owner, operator, supervisor, manager or any other  
14 person who controls, governs, or directs the activities in a place of employment or public place.

15 Section 13. That Title 8 of the Lincoln Municipal Code be amended by adding a  
16 new section numbered 8.50.160 to read as follows:

17 **8.50.160** **Definition; Public Place.**

18 Public Place shall mean an indoor area to which the public is invited or in which the  
19 public is permitted, whether or not the public is always invited or permitted. A private residence  
20 shall not be considered a “public place.”

21 ~~Section 17. That Title 8 of the Lincoln Municipal Code be amended by adding a~~  
22 ~~new section numbered 8.50.170 to read as follows:~~

23 ~~**8.50.170**~~ ~~**Definition; Smoking Room.**~~

24 ~~Smoking room shall mean a room designated by a proprietor where smoking may be~~  
25 ~~allowed.~~

26 Section 14. That Title 8 of the Lincoln Municipal Code be amended by adding a  
27 new section numbered 8.50.180 to read as follows:

1     **8.50.180     Definition; Smoke or Smoking.**

2             Smoke or smoking shall mean the lighting of any cigarette, cigar, or pipe; or the  
3 possession of any lighted cigarette, cigar, or pipe, regardless of its composition.

4             ~~Section 19. That Title 8 of the Lincoln Municipal Code be amended by adding a~~  
5 ~~new section numbered 8.50.190 to read as follows:~~

6     **8.50.190     Definition; Smoke Shop.**

7             ~~Smoke shop shall mean any place of employment or public place where over fifty percent~~  
8 ~~(50%) of the annual gross sales is from the sale of tobacco products and/or smoking accessories.~~

9             ~~Section 20. That Title 8 of the Lincoln Municipal Code be amended by adding a~~  
10 ~~new section numbered 8.50.200 to read as follows:~~

11     **8.50.200     Definition; Theater.**

12             ~~Theater shall mean a concert hall, art center, museum, or similar establishment which is~~  
13 ~~primarily devoted to the arts or theatrical performances.~~

14             Section 15. That Title 8 of the Lincoln Municipal Code be amended by adding a  
15 new section numbered 8.50.210 to read as follows:

16     **8.50.210     Smoking Prohibited; Exceptions.**

17             It shall be unlawful for any person to smoke in a place of employment or a public place,  
18 except as designated by a proprietor pursuant to this Chapter.

19             Section 16. That Title 8 of the Lincoln Municipal Code be amended by adding a  
20 new section numbered 8.50.220 to read as follows:

21     **8.50.220     Proprietor to Prohibit Smoking; Exceptions.**

22             (a)     It shall be unlawful for any proprietor of any place of employment or public place  
23 to allow smoking except where allowed by this Chapter as follows.

24                     (1)     Guestrooms or suites, provided the following requirements are met:

25                             (i)     The number of rooms or suites designated for smoking shall be no  
26 greater than 20% of the total number of guestrooms or suites.

1                   (ii)     Each guestroom or suite where smoking is allowed shall have a  
2                   permanent sign posted containing the words “smoking allowed” on each entrance.

3                   (2)     As part of a study conducting research into the health effects of smoking in  
4                   a scientific or analytical laboratory either governed by state or federal law or at a college  
5                   or university approved by the Nebraska Coordination Commission for post Secondary  
6                   Education. The proprietor shall post a temporary sign on all entrances to the laboratory  
7                   indicating that smoking is being allowed for the purposes of research.

8                   (b)     Proprietors shall conspicuously post or display required signs so that the signs are  
9                   readily viewable by employees and the public.

10                  (c)     This section shall not be interpreted or construed to permit smoking where  
11                  smoking is otherwise restricted by other applicable laws.

12                  ~~(b)     The proprietor shall have an affirmative defense to any violation of this~~  
13                  ~~section if the proprietor:~~

14                  ~~(1)     Has posted at least one conspicuously placed permanent sign at all~~  
15                  ~~entrances of the place of employment or public place used by employees or members of the~~  
16                  ~~public containing the international no smoking symbol or the words “no smoking,” or the words~~  
17                  ~~“no smoking under penalty of law”; and~~

18                  ~~—————(2)     Verbally requested a person to refrain from smoking within a public place~~  
19                  ~~or place of employment where smoking is prohibited; and~~

20                  ~~—————(3)     Has taken every reasonable step to prohibit a person from smoking.~~  
21                  ~~“Reasonable step” shall not require the physical ejection of a person by the proprietor from the~~  
22                  ~~place of employment or public place.~~

23                  ~~—————Section 23. That Title 8 of the Lincoln Municipal Code be amended by adding a~~  
24                  ~~new section numbered 8.50.230 to read as follows:~~

25                  ~~**8.50.230     Smoking Allowed by Permit.**~~

26                  ~~—————(a)     In order to allow smoking, a proprietor shall obtain a permit for any of the~~  
27                  ~~following places of employment or public places:~~

1       ~~(1) Guestrooms or suites, provided the following requirements are met:~~

2       ~~(i) The number of rooms or suites designated for smoking must be~~  
3 ~~reasonably proportionate to the preference of the users.~~

4       ~~(ii) Each guestroom or suite where smoking is allowed shall have a~~  
5 ~~permanent sign posted containing the words "smoking allowed" on its door.~~

6       ~~(2) A smoking room within any place of employment or public place,~~  
7 ~~provided the following requirements are met:~~

8       ~~(i) The smoking room shall be separated from the rest of the place of~~  
9 ~~employment or public place, and from any other adjacent or connected place of employment or~~  
10 ~~public place, by continuous and solid walls, floors, ceilings, and doors equipped with automatic~~  
11 ~~closing mechanisms;~~

12       ~~(ii) The smoking room shall be at negative air pressure with respect to~~  
13 ~~any adjacent or connected non-smoking area to reduce any flow of air from the smoking room~~  
14 ~~into the non-smoking portion of the place of employment or public place;~~

15       ~~(iii) The smoking room's air shall be immediately exhausted to the~~  
16 ~~outside of the building by an exhaust fan rather than being recirculated within the smoking room~~  
17 ~~or into any non-smoking area;~~

18       ~~(iv) The Health Director may waive (i), (ii), or (iii) above and approve~~  
19 ~~an alternative method of ventilation or construction if such method would provide the equivalent~~  
20 ~~or better prevention of smoke permeation or leakage from the smoking room into non-smoking~~  
21 ~~areas as (i), (ii), and (iii) would have provided;~~

22       ~~(v) The size of the smoking room shall be reasonably proportionate to~~  
23 ~~the preference of the users of the place of employment or public place;~~

24       ~~(vi) Any service or amenity which the proprietor chooses to provide to~~  
25 ~~the public or employees within the smoking room shall also be available to the public or~~  
26 ~~employees in the nonsmoking areas of the place of employment or public place;~~



1 ~~\_\_\_\_\_ (vii) No member of the public nor any employee shall be required to~~  
2 ~~enter the smoking room in order to access common areas of the place of employment or public~~  
3 ~~place, including but not limited to, hallways, restrooms, lobbies, and waiting rooms; and~~

4 ~~\_\_\_\_\_ (viii) The proprietor shall post a permanent sign on each entrance of a~~  
5 ~~smoking room containing the words "smoking allowed."~~

6 ~~\_\_\_\_\_ (3) A smoke shop, provided that it shall not sell or serve alcoholic beverages.~~

7 ~~\_\_\_\_\_ (4) A bar.~~

8 ~~\_\_\_\_\_ (b) If smoking is allowed, proprietor shall permanently post or display the following~~  
9 ~~signs so they are readily viewable by employees and the public at each entrance to the place of~~  
10 ~~employment or public place:~~

11 ~~\_\_\_\_\_ (1) "Smoking allowed in entire establishment" if smoking is to be allowed in~~  
12 ~~the entire place of employment or public place; or~~

13 ~~\_\_\_\_\_ (2) "No Smoking except in designated areas."~~

14 ~~\_\_\_\_\_ (c) No proprietor shall allow smoke to permeate or leak into any other place of~~  
15 ~~employment or public place such that it becomes a nuisance to any person in said other place of~~  
16 ~~employment or public place:~~

17 ~~\_\_\_\_\_ (d) This Chapter shall not be interpreted or construed to permit smoking where~~  
18 ~~smoking is otherwise restricted by other applicable laws:~~

19 ~~\_\_\_\_\_ Section 24. That Title 8 of the Lincoln Municipal Code be amended by adding a~~  
20 ~~new section numbered 8.50.240 to read as follows:~~

21 **8.50.240 Smoking Allowed Without Permit by Written Notification.**

22 ~~\_\_\_\_\_ (a) No permit shall be required when a proprietor provides written notification to the~~  
23 ~~Health Director that the proprietor will be temporarily allowing smoking in the following~~  
24 ~~circumstances in a place of employment or public place:~~

25 ~~\_\_\_\_\_ (1) As part of a study conducting research into the health effects of smoking in~~  
26 ~~a scientific or analytical laboratory either governed by state or federal law or at a college or~~  
27 ~~university approved by the Nebraska Coordinating Commission for Post Secondary Education.~~

1 The proprietor shall post a temporary sign on all entrances to the laboratory indicating that  
2 smoking is being allowed for the purposes of research.

3 ~~————— (2) ———~~ In a theatrical production where smoking by an actor or actress as part of  
4 the character role is an integral part of the story. The proprietor shall post a temporary sign on all  
5 entrances to the theater indicating that smoking is part of the theatrical production.

6 ~~————— (b) ———~~ Proprietors shall conspicuously post or display required signs so that the signs are  
7 readily viewable by employees and the public.

8 ~~————— (c) ———~~ No proprietor shall allow smoke to permeate or leak into any other place of  
9 employment or public place such that it becomes a nuisance to any person in said other place of  
10 employment or public place.

11 ~~————— (d) ———~~ This section shall not be interpreted or construed to permit smoking where  
12 smoking is otherwise restricted by other applicable laws.

13 ~~—————~~ Section 25. That Title 8 of the Lincoln Municipal Code be amended by adding a  
14 new section numbered 8.50.250 to read as follows:

15 **8.50.250 ——— Permit.**

16 ~~————— (a) ———~~ An application for a permit to allow smoking pursuant to this Chapter shall be  
17 submitted to the Health Director on forms provided by the Health Director. Each application  
18 shall include:

19 ~~————— (1) ———~~ The proprietor's full name, mailing address, and phone number;

20 ~~————— (2) ———~~ The name and address of the place of employment or public place and a  
21 description of the services provided or products sold;

22 ~~————— (3) ———~~ A description of the indoor area to be included in the permit, including:

23 ~~————— (i) ———~~ For a smoking room: a drawing and measurements of the indoor  
24 area where smoking is to be allowed and a description of the ventilation system and the physical  
25 separation provided by walls, floors, ceilings and doors required by this Chapter;

26 ~~————— (ii) ———~~ For guestrooms and suites: a basic floor plan and a list of room  
27 numbers designated as smoking and as nonsmoking;

1       ~~————— (4) If the application is for a bar or smoke shop, the application shall include:~~

2       ~~————— (i) For a bar: An affidavit verifying that the annual gross receipts from~~  
3 ~~the sale and service of food constitute less than sixty percent (60%) of annual gross receipts from~~  
4 ~~all business activity conducted on the premises. If the bar has been in business less than a year,~~  
5 ~~the affidavit must show that the anticipated gross receipts from the sale and service of food will~~  
6 ~~constitute less than sixty percent (60%) of the annual gross receipts from all business activity~~  
7 ~~conducted on the premises, and such percentage must be based upon sales thus far if any.~~

8       ~~————— (ii) For a smoke shop: An affidavit verifying that the annual gross~~  
9 ~~receipts from the sale of tobacco products and/or smoking accessories constitute more than fifty~~  
10 ~~percent (50%) of annual gross receipts from all business activity conducted on the premises. If~~  
11 ~~the smoke shop has been in business less than a year, the affidavit must show that the anticipated~~  
12 ~~gross sales receipts from the sale of tobacco products and/or smoking accessories will constitute~~  
13 ~~more than fifty percent (50%) of the annual gross receipts from all business activity conducted on~~  
14 ~~the premises, and such percentage must be based upon sales thus far if any.~~

15       ~~————— (iii) The affidavit shall be renewed upon the filing of an application for~~  
16 ~~renewal of the smoking permit for the bar or smoke shop;~~

17       ~~————— (5) A description of how the proprietor determined an area or number of~~  
18 ~~rooms to be reasonably proportionate to the preference of the users, where required by this~~  
19 ~~Chapter;~~

20       ~~————— (6) The signature of the proprietor;~~

21       ~~————— (7) Plan review fees, if applicable; and~~

22       ~~————— (8) Permit fees.~~

23       ~~———— (b) If more than one place of employment or public place is owned by a proprietor, a~~  
24 ~~separate application and fees shall be required for each location of the place of employment or~~  
25 ~~public place.~~

26       ~~———— (c) A plan review shall be required for a new smoking room or the remodeling of a~~  
27 ~~smoking room.~~

1 ~~————— (1) The plan review fee is \$200, is in addition to any permit fee, and shall not~~  
2 ~~be prorated;~~

3 ~~————— (2) The plan review will be completed within fourteen (14) days of~~  
4 ~~submission;~~

5 ~~————— (3) A plan review is not necessary when a place of employment or public~~  
6 ~~place with a permit is acquired by a new proprietor if there are no physical or structural changes~~  
7 ~~made to the areas covered in the permit.~~

8 ~~————— (d) The fees for permits shall be as follows:~~

9 ~~————— (1) Annual permit fees:~~

10 ~~————— (i) Smoking room (per room): \$200~~

11 ~~————— (ii) Bar or Smoke Shop: \$200~~

12 ~~————— (iii) Smoking guestrooms or suites (total): \$200~~

13 ~~————— (2) Any new permit issued after the thirtieth of April of each calendar year~~  
14 ~~shall pay seventy percent (70%) of the annual permit fee; this proration shall not apply prior to~~  
15 ~~November 1, 2004. Renewal of permits shall be as required in this Chapter.~~

16 ~~————— (3) A proprietor who fails to apply for renewal of a permit before it expires,~~  
17 ~~but does so within thirty (30) days of the date of expiration, shall pay a late fee of \$100, in~~  
18 ~~addition to the annual fee.~~

19 ~~————— (4) A proprietor who fails to apply for renewal of a permit prior to thirty (30)~~  
20 ~~days after the date of expiration shall pay a late fee of \$200, in addition to the annual fee.~~

21 ~~————— (5) It shall be unlawful for a proprietor to continue to allow smoking within a~~  
22 ~~place of employment or public place if the proprietor fails to apply for renewal of a permit within~~  
23 ~~sixty (60) days after expiration. The proprietor will be deemed to be operating without a valid~~  
24 ~~permit.~~

25 ~~————— (e) Upon receipt of a completed application for a new permit, completion of a plan~~  
26 ~~review, or completion of any construction, whichever is later, the Health Director shall make an~~

~~inspection of the place of employment or public place within fourteen (14) days to determine if the place of employment or public place complies with the provisions of this Chapter.~~

~~————— (1) If the application and the place of employment or public place complies with the provisions of this Chapter, the Health Director shall issue a permit within ten (10) days.~~

~~————— (2) Upon receipt of an application for a permit renewal and the applicable fees, the Health Director may issue the permit without conducting an inspection.~~

~~————— (3) A permit issued hereunder is strictly limited to the proprietor and the place of employment or public place specified in the permit. A new proprietor of a permitted place of employment or public place may temporarily use the old proprietor's permit for a period of thirty (30) days or until the new proprietor has obtained a permit, whichever occurs first.~~

~~————— (4) A permit shall be non-transferable from one proprietor to another or from one place of employment or public place to another.~~

~~————— (5) Any relocation of the place of employment or public place shall require a new application, with the payment of any applicable fees.~~

~~———— (f) All permits granted under the provisions of this Chapter shall expire on the thirty-first day of October following the date of their issuance, unless revoked prior thereto as provided in this Chapter.~~

~~———— (g) All permits issued prior to November 1, 2004 will be considered as having been issued on that date, and will be valid until the expiration date the following year.~~

~~———— Section 26. That Title 8 of the Lincoln Municipal Code be amended by adding a new section numbered 8.50.260 to read as follows:~~

~~**8.50.260 — Inspection.**~~

~~———— (a) The Health Director shall conduct an inspection of each place of employment or public place before a new permit is issued.~~

~~———— (b) The Health Director shall conduct periodic inspections of each permitted place of employment or public place.~~

1 ~~—— (c) A proprietor shall permit the Health Director to inspect at any reasonable time for~~  
2 ~~the purpose of determining compliance with the provisions of this Chapter.~~

3 ~~—— (d) The Health Director shall record the inspection findings on an inspection report.~~  
4 ~~The Health Director shall furnish a copy of the inspection report to the proprietor.~~

5 ~~—— (e) The inspection report shall:~~

6 ~~—— (1) Set forth specific conditions found;~~

7 ~~—— (2) Establish a specific and reasonable period of time for correction of~~  
8 ~~violations of the provisions of this Chapter, if any; and~~

9 ~~—— (3) If a permit is already in force, state that failure to correct any violations~~  
10 ~~within the period of time specified may result in suspension or revocation of the permit and~~  
11 ~~prosecution for violation of this Chapter.~~

12 ~~—— (f) After the time period given for correction in the inspection report, the Health~~  
13 ~~Director shall reinspect the place of employment or public place to determine compliance.~~

14 ~~—— (g) The completed inspection report form is a public document that shall be made~~  
15 ~~available for public disclosure to any person who requests it according to law.~~

16 ~~—— Section 27. That Title 8 of the Lincoln Municipal Code be amended by adding a~~  
17 ~~new section numbered 8.50.270 to read as follows:~~

18 **8.50.270 Violations: Notice, Hearing, Suspension, Revocation.**

19 ~~—— It shall be a condition of any permit issued pursuant to this Chapter that it may be~~  
20 ~~suspended or revoked by the Health Director for the violation of any provision of this Chapter.~~  
21 ~~The process for such suspension or revocation is as follows:~~

22 ~~—— (a) The Health Director shall notify the proprietor of alleged violation of this Chapter~~  
23 ~~by:~~

24 ~~—— (1) Personal service to the proprietor; or~~

25 ~~—— (2) By first-class regular mail to the proprietor's address designated in the~~  
26 ~~permit.~~

1       ~~(b) The proprietor shall have a right to a hearing which the Health Director shall~~  
2       ~~conduct in accordance with this Chapter. The date, time and place of the hearing shall be~~  
3       ~~included in the notification of the alleged violation.~~

4       ~~(c) The Health Director shall conduct a hearing not less than fourteen (14) days after~~  
5       ~~notice is sent to or served upon the proprietor.~~

6       ~~(d) The Health Director may appoint a suitable hearing officer to hear the matter.~~  
7       ~~Such hearing officer shall make recommendations based on the evidence adduced at the hearing~~  
8       ~~for the Health Director's final determination of the matter.~~

9       ~~(e) The hearing need not be conducted according to the technical rules relating to~~  
10       ~~evidence and witnesses. The proprietor and the Health Director may:~~

11       ~~(1) Call and examine witnesses on any matter relevant to the issues of the~~  
12       ~~hearing;~~

13       ~~(2) Introduce documentary and physical evidence;~~

14       ~~(3) Cross examine opposing witnesses on any matter relevant to the issues of~~  
15       ~~the hearing; and~~

16       ~~(4) Rebut evidence.~~

17       ~~(f) The Health Director shall make a final determination within ten (10) days after the~~  
18       ~~hearing.~~

19       ~~(g) The Health Director may, upon finding the proprietor to be in violation of this~~  
20       ~~Chapter, suspend the permit for up to ninety (90) days or revoke the permit.~~

21       ~~(h) The Health Director's decision shall be effective immediately. The decision shall~~  
22       ~~be final and binding upon the proprietor.~~

23       ~~(i) If a permit is revoked by the Health Director, the proprietor may not apply for a~~  
24       ~~new permit at any place of employment or public place for a period of one year.~~

25       ~~(j) Any proprietor aggrieved by a final decision of the Health Director in the~~  
26       ~~administration or enforcement of this Chapter may appeal such decision to the district court as~~  
27       ~~provided by state law. The filing of an appeal does not automatically stay the enforcement of the~~

~~Health Director's decision. The Health Director may order a stay. In determining whether to grant a stay, the Health Director will consider whether the proprietor has come into compliance with this Chapter during the pendency of the appeal, and whether application of the Health Director's decision during the appeal will cause the proprietor to suffer irreparable harm.~~

Section 17. That Title 8 of the Lincoln Municipal Code be amended by adding a new section numbered 8.50.280 to read as follows:

**8.50.280      Enforcement.**

The Health Director and law enforcement agencies are hereby authorized to inspect a place of employment or public place at any reasonable time to determine compliance with this Chapter.

Section 18. That Title 8 of the Lincoln Municipal Code be amended by adding a new section numbered 8.50.290 to read as follows:

**8.50.290      Violations and Penalties.**

(a)      A person who smokes in a place of employment or a public place in violation of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a minimum fine of:

- (1)      One hundred dollars (\$100) and costs for the first offense;
- (2)      Two hundred dollars (\$200) and costs for the second offense;
- (3)      Five hundred dollars (\$500) and costs for the third and subsequent offenses.

(b)      A proprietor of a place of employment or public place upon whom a duty is placed by the provisions of this Chapter, who shall fail, neglect, or refuse to perform such duty, or who shall knowingly violate any of the provisions hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a minimum fine of:

- (1)      One hundred dollars (\$100) and costs for the first offense;
- (2)      Two hundred dollars (\$200) and costs for the second offense;



1                   (3)     Five hundred dollars (\$500) and costs for the third and subsequent  
2 offenses.

3                   ~~(c)     In the case of a bar or smoke shop, a proprietor who shall have knowingly~~  
4 ~~submitted false information in an affidavit shall be deemed guilty of a misdemeanor, and upon~~  
5 ~~conviction thereof, shall be punished by a minimum fine of five hundred dollars (\$500) together~~  
6 ~~with costs and up to six (6) months in jail. In addition to said punishment:~~

7                   ~~—————(1)     Any permit issued based upon the false affidavit shall be considered null~~  
8 ~~and void as though it had never been issued, and fines for operating without a permit may be~~  
9 ~~levied against the proprietor;~~

10                  ~~—————(2)     The City may revoke or suspend any other permit or license that the~~  
11 ~~proprietor has received from the City of Lincoln for the place of employment or public place; and~~

12                  ~~—————(3)     The proprietor may not apply for any new smoking permit at any place of~~  
13 ~~employment or public place for a period of one years.~~

14                  (c)     Each day that a violation continues to exist shall constitute a separate and distinct  
15 offense and shall be punishable as such.

16                  (d)     Every act or omission of whatever nature constituting a violation of any of the  
17 provisions of this Chapter by an officer, manager, supervisor, agent, or employee of any  
18 proprietor, if said act or omission is made with the authorization, knowledge, or approval of the  
19 proprietor, shall be deemed and held to be the act or omission of such proprietor, and said

1 proprietor shall be punishable in the same manner as if said act or omission had been committed  
2 by such proprietor personally.

3           Section 19. That Title 8 of the Lincoln Municipal Code be amended by adding a  
4 new section numbered 8.50.300 to read as follows:

5 **8.50.300       Grace Period.**

6           Any place of employment or public place not in full compliance with this Chapter upon  
7 its effective date shall have until November 1, 2004 to comply with the requirements of this  
8 Chapter. No penalty shall be imposed against any proprietor or person for noncompliance with  
9 this chapter until November 1, 2004.

10           Section 20. That Title 8 of the Lincoln Municipal Code be amended by adding a  
11 new section numbered 8.50.310 to read as follows:

12 **8.50.310       Severability.**

13           Each section and subsection of this Chapter is hereby declared to be independent of every  
14 other section or subsection of this Chapter and invalidity of any section or subsection of this  
15 Chapter shall not invalidate any other section or subsection thereof.

16           Section 21. That Sections 1 through 23 of this ordinance shall be codified in the  
17 Lincoln Municipal Code as Chapter 8.50 entitled "Lincoln Smoking Regulation Act."

18           Section 22. That Chapter 8.48 of the Lincoln Municipal Code as hitherto existing  
19 be and the same is hereby repealed.

20           Section 23. That this ordinance shall take effect and be in force from and after its  
21 passage and publication according to law.

Introduced by:

---

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_\_ day of \_\_\_\_\_, 2004:

\_\_\_\_\_  
Mayor